

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

MCKENNA ADVISORS LLC,	.	Civil Action No. 1:23mc8
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Petitioner,	.	
	.	
vs.	.	Alexandria, Virginia
	.	May 12, 2023
PGA TOUR, INC.,	.	10:05 a.m.
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Respondent.	.	
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TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE WILLIAM E. FITZPATRICK
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PETITIONER:	JAMES G. KRESS, ESQ. Baker Botts LLP 700 K Street, N.W. Washington, D.C. 20001
FOR THE RESPONDENT:	BROOK DOOLEY, ESQ. Keker, Van Nest & Peters LLP 633 Battery Street San Francisco, CA 94111
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(Pages 1 - 79)

(Proceedings recorded by FTR electronic sound recording,
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1 P R O C E E D I N G S

2 THE CLERK: McKenna Advisors LLC versus PGA Tour,
3 Inc., Case 1:23mc8. Counsel, please note your appearances for
4 the record.

5 MR. KRESS: Jim Kress, Baker Botts, on behalf of
6 petitioner, McKenna Advisors.

7 THE COURT: Good morning, Mr. Kress.

8 MR. KRESS: Good morning.

9 MR. DOOLEY: Good morning, Your Honor. Brook Dooley,
10 Keker, Van Nest & Peters, on behalf of the respondent, PGA
11 Tour.

12 THE COURT: And good morning, Mr. Dooley. How are
13 you?

14 MR. DOOLEY: Very well.

15 THE COURT: All right. The -- just as a, as a
16 preliminary matter, maybe it makes sense to address and just
17 rule from the bench the motions to seal just so that we can
18 just get that out of the way. I've reviewed -- and the
19 documents are indeed marked "Confidential" from discovery and
20 pertain to confidential business relationships, for example,
21 the work order, the -- plus some of the analysis of the local
22 rule; and with respect to the statements for sealing, what
23 we're referring to is petitioner's motion to seal, which is
24 identified at Docket No. 4; respondent's motion to seal, Docket
25 15; and respondent's motion to seal, Docket 22.

1 For each of these motions to seal, the parties have
2 complied with Local Rule 5 by submitting the appropriate
3 memoranda, notice, and proposed orders. A period of seven days
4 for response or objection has passed after the filing of each
5 motion, with no objections made and only supported -- only
6 support filed for the respondent's motions as well as
7 petitioner's motion.

8 Accordingly, the Court will now determine whether the
9 documents should remain under seal. While there is a presumed
10 right of public access to court documents, the court may at its
11 discretion seal documents where that right of access is
12 outweighed by competing interest. That's *In re Knight*
13 *Publishing Company*, 743 F.3d -- I'm sorry, F.2d 231 (4th Cir.
14 1984).

15 Here each party has demonstrated that information
16 documents requested to be sealed are indeed confidential and
17 proprietary in nature, the public disclosure of which would
18 likely cause damage to their business interests. Therefore,
19 the Court finds that the appropriate standard for filing
20 material under seal has been met, the motions will be granted,
21 and the information in documents requested in, in the
22 respective motions will remain under seal, and will enter an
23 order to that effect today.

24 So now with respect to the motion to quash, again,
25 let me just put on the record just to, just to kind of set the

1 stage, and then, and then we'll get into the meat of the
2 argument and where we go from here. This matter comes to the
3 Court based on petitioner's motion to quash a third-party
4 subpoena served on petitioner, McKenna Advisors LLC, in an
5 action pending in the United States District Court for the
6 Northern District of California. Petitioner is a nonparty to
7 the underlying lawsuit. The underlying lawsuit was brought by
8 several professional golfers and LIV Golf, Inc., who are suing
9 the PGA Tour over PGA's conduct related to the player
10 plaintiffs' involvement with LIV Golf, which is a competing
11 professional golf tour.

12 Specifically, the plaintiffs allege that the PGA Tour
13 committed antitrust violations, breach of contracts, and
14 engaged in tortious conduct. The PGA Tour has counterclaimed
15 against LIV Golf, alleging tortious interference with the PGA
16 Tour's contracts with the player plaintiffs.

17 Petitioner is a small Virginia-based consulting firm
18 that LIV Golf hired as an outside consultant to conduct
19 specific tasks related to LIV's efforts to compete with the
20 PGA.

21 On December 27, 2022, petitioner was served with a
22 subpoena to testify at a deposition and produce documents, with
23 a, with a return date of January 20, 2023. The subpoena
24 attached 13 deposition topics and 21 requests for production.

25 On March 10, 2023, following meet and confer efforts,

1 the respondent amended its subpoena to remove 5 of the 21
2 requests for production and to receive one other request for
3 production -- I'm sorry, to revise one other request for
4 production. As I understand it, there, there continued to be
5 some discussions.

6 I think I have a general understanding as to where
7 the parties are now, but I'll, obviously, rely on you-all just
8 to make sure that, you know, to frame the issues in dispute,
9 and we'll go from there.

10 Mr. Kress, this is obviously your motion. I will
11 defer to you in terms of how you want to organize these issues,
12 to tackle these issues. Obviously, the, the goal today is I
13 will -- I'll rule from the bench. I'll give you as much
14 clarity as I, as I possibly can so that the parties know
15 exactly what the lay of the land is moving forward, and the
16 documents can be provided, the deposition can be taken, and you
17 guys can continue to advance this case as efficiently as
18 possible.

19 I'm happy to do it any way you think is most
20 profitable. We can either just go through the, the discovery
21 requests one at a time, we can sort of group the issues,
22 whatever you think is, is best.

23 MR. KRESS: Thank you very much, Your Honor. So good
24 morning. Obviously, it sounds like you are very familiar with
25 the underlying litigation, what brought us here, and really

1 even for the most part what specific discovery is at issue.

2 I do want to say, though, we've been dealing with
3 this subpoena as a nonparty for about five months and feel like
4 it's been a constantly evolving back-and-forth about what is it
5 exactly that the PGA seeks from McKenna and what it is they
6 can't get otherwise.

7 The last actual negotiation before we filed our
8 motion, the big topics listed were public affairs, government
9 relations, and opposition research. None of those terms even
10 make it into their motion that they've -- excuse me, their
11 opposition to our motion except for the fact that only after we
12 filed our motion have they dropped the government
13 investigations, government communications. So this is a --
14 this has been an evolving pattern.

15 Stepping back, though, look, McKenna does not argue
16 that it is exempt or immune from discovery. Nor do we argue
17 that the work that we did on behalf of LIV, that a lot of it
18 may not be relevant to the underlying litigation, right?

19 So clearly from day one, we had agreed and produced
20 what was our work order, what were the tasks that we were given
21 by LIV. We've also confirmed with them that we had no separate
22 engagement, no separate work order from PIF or the Kingdom of
23 Saudi Arabia or anyone else. That was it.

24 Where the issues in the case overlap with our work
25 clearly related to communications with players, agents about,

1 you know, player, you know, player solicitation, player
2 recruitment, contracts, and compensation. We didn't have to
3 file a motion to get here on those topics, Your Honor. We'd
4 agreed to that from day one.

5 They -- we've had a meet and confer, and they said,
6 look, you might have talked to those -- about those topics with
7 PIF. PIF is not a party to the case. Maybe it is now on their
8 counterclaim.

9 We actually said, you know what, Your Honor? If
10 that's what will make this go away, we'll give you our
11 communications with PIF related to player recruitment, player
12 solicitation, compensation, contracts. Again, that's the heart
13 of their case.

14 When we were here on the motion to transfer the other
15 day, you know, they cite in their brief the idea that the court
16 in California had already ruled that, that discovery from PIF
17 is, is highly relevant in this case, right? And then they
18 quote, though, and the quote says: "with respect to player
19 recruitment, player solicitation, player contracts." That's
20 page 6 of their motion -- of their motion to transfer. That's
21 a direct quote. That's what the court said was relevant.

22 Again, we've given to them that before we ever had to
23 file this motion, and we --

24 THE COURT: I'm sorry to interrupt, but that includes
25 PIF as well as Mr. Al-Ramayyan?

1 MR. KRESS: Yes, yes. Yes, Your Honor.

2 So, so that -- again, we agreed to that before we had
3 to file this motion. There's no -- every negotiation has been
4 if we offer to give something at the heart of it, that's a
5 compromise, the answer is: That's great. Now we want
6 everything else. We're here to talk about everything else, not
7 what's at issue in this case.

8 So we heard you yesterday -- or, excuse me, Wednesday
9 on a motion to transfer, you said, look, be very specific to
10 the extent that the court in California has ruled on discovery
11 matters and has provided guidance, let's be very specific, not
12 general, that they've said discovery as to PIF, for example, is
13 related or relevant.

14 If I may approach for one second, Your Honor?

15 THE COURT: Just use a court security officer.

16 MR. KRESS: Sure.

17 MR. DOOLEY: What is this?

18 MR. KRESS: This is your -- the order that was
19 attached to the hearing on the PIF motion to compel.

20 MR. DOOLEY: Is this an exhibit?

21 MR. KRESS: That was Exhibit A.

22 MR. DOOLEY: Is it an exhibit to your papers?

23 MR. KRESS: No. We just discovered this after the
24 hearing.

25 MR. DOOLEY: Oh, I see.

1 MR. KRESS: So -- do you want one more, ma'am?

2 THE CLERK: No. He can't talk at the same time.

3 MR. KRESS: Oh, I'm sorry. So, so we were -- you
4 know, we took your -- we took your statement to heart, and we
5 noticed that they attached a 59-page decision that related to
6 the PIF dispute. Fifty-eight pages of it, I think, were
7 related to sovereign immunity, qualified common law immunity,
8 and about 2 pages of it actually dealt with the discovery
9 dispute as to PIF. PIF is a party. We are a nonparty.

10 Even there, Your Honor, the one piece of that filing
11 that they didn't attach was the actual order, or the exhibit to
12 the order where the court went through and the parties
13 addressed the discovery to PIF. The cross-outs are made by the
14 court.

15 So, for example, while we're here today, essentially
16 when they ask for all communications with PIF about the PGA,
17 about LIV, about the establishment of a competing golf tour, if
18 we look at No. 13, again, discovery even as to PIF the court
19 has stricken. Communications and agreements with third
20 parties, including consultants and banks, related to LIV or the
21 development of a professional golf league or tour, that's us,
22 Your Honor. We're a consultant. We weren't even a consultant
23 to PIF, by the way, but -- so they are seeking from us much
24 more, frankly, than they can get in the Northern District of
25 California.

1 A couple of these other strike-outs are going to be
2 relevant to a few of the other topics that we're going to talk
3 about today, but that was the one piece of information that was
4 not included with the description of the underlying discovery
5 as to PIF.

6 Now, when it comes to the communications with golf
7 stakeholders, right, that's their Spec 14, I believe, in their
8 motion, and, you know, this is probably the only discovery
9 motion I've ever argued where the party seeking discovery never
10 actually cites what their document requests are. So they may
11 make it sound like, you know, sort of very narrow with respect
12 to what they're seeking, but Request No. 14 actually says all
13 communications with, and they've struck a few topics,
14 government officials. It includes sports media, professional
15 golf, equipment manufacturers, venue or course owners, golf
16 trade associations. The topics: the PGA Tour, LIV, LIV's
17 efforts to establish a competing tour, Golf Saudi, the Kingdom
18 of Saudi Arabia, the Kingdom of Saudi Arabia's human rights
19 records.

20 This is, this is not just communications with these
21 other third-party golf stakeholders who might have been
22 interested in doing business with LIV. We clearly had some
23 communications with those entities about whether or not they
24 might have had interest in doing business with LIV. We
25 actually think that they have the better of that argument, and

1 we agreed in our paper, said, okay, if that's what you're
2 talking about, not Kingdom of Saudi Arabia human rights
3 records, not anybody and everywhere, we'll give you our
4 communications.

5 We report to our client. We tell them, hey, did we
6 talk to a broadcaster? Did we talk to a tournament host? Are
7 they saying they will or will not do business with you? Did
8 they tell us why?

9 We said we'll give them that. That's -- again, we
10 need to talk about what we're not here for. They want
11 everything else. They want --

12 THE COURT: How do we get there?

13 MR. KRESS: Yeah.

14 THE COURT: What I -- and I, and I understand your
15 argument, I take your point, but it seems to me just
16 mechanically for today's purposes --

17 MR. KRESS: Um-hum, yes.

18 THE COURT: -- right, because on some level, it
19 almost seems like we're trying to catch smoke in our hands.

20 MR. KRESS: Exactly.

21 THE COURT: That maybe what we ought to do is just go
22 through Request for Production No. 1, hear your position, hear
23 the PGA's position. I'll give you a ruling --

24 MR. KRESS: Okay.

25 THE COURT: -- and we'll move on to Request for

1 Production No. 2.

2 MR. KRESS: Perfect.

3 THE COURT: And I think if we handle it that way,
4 then at least by the end of today, whether you agree or
5 disagree with what I do, everybody will sort of know what the,
6 what the lay of the land is moving forward.

7 Does that, does that make sense?

8 MR. DOOLEY: May I be heard on that, Your Honor?

9 THE COURT: Sure, absolutely.

10 MR. DOOLEY: That makes perfect sense to me, Your
11 Honor. The only suggestion I have is the, the requests have
12 been grouped in the briefing, and so it may make sense to go
13 through the requests subject by subject. That would be my only
14 suggestion. And some of the requests are not at issue, but
15 that would be my only suggestion.

16 THE COURT: Absolutely fine. I mean, whatever --
17 honestly, whatever you think makes the most sense to kind of
18 organize the ideas and organize the thoughts. I mean, it is
19 Mr. Kress's motion, so I'm going to -- I'm going to let him
20 sort of figure out exactly what the path forward is, but, I
21 mean, my goal is just to be able to make sure that if there is
22 a dispute and it's a meaningful dispute --

23 MR. KRESS: Right.

24 THE COURT: -- it gets resolved.

25 MR. KRESS: Understood, Your Honor. Thank you.

1 So if I may -- and agreeing with Mr. Dooley -- not
2 everything is in dispute. So I think that the -- I think if we
3 look at their opposition brief --

4 THE COURT: Okay.

5 MR. KRESS: -- they've essentially, you know, I think
6 they've essentially grouped these things as, you know, that
7 with, excuse me, McKenna's communications with third-party golf
8 stakeholders, that's the first one, that's No. 14.

9 THE COURT: Okay.

10 MR. KRESS: And again, what we -- we have already
11 agreed to give communications with players, agents, with our
12 client about our communications with players, agents,
13 contracts, compensation, player solicitation. That's off the
14 table.

15 THE COURT: So maybe it makes sense for me to hear
16 from the, from the PGA about, about with respect to --

17 MR. KRESS: 14?

18 THE COURT: -- RFP 14, what they think they're
19 entitled to that you haven't already agreed to give them.

20 MR. KRESS: I think that would make a lot of sense.
21 Thank you, Your Honor.

22 MR. DOOLEY: Thank you, Your Honor. If I might,
23 before I address Topic 14, if I might make a few general points
24 that I think are responsive to Mr. Kress and help frame this
25 discussion, the, the first point that I, that I think is

1 important for the Court to have in mind is that the petitioner,
2 McKenna, is trying to artificially narrow what the underlying
3 case is about.

4 You heard from Mr. Kress that the heart of the case
5 is about player solicitation and the, and the Tour's
6 enforcement of its regulations that arguably prevent the
7 players from moving over to LIV. That's certainly one element
8 of the case, and we appreciate McKenna's agreement to produce
9 those documents, but that is far from the only thing that's in
10 the case, and I think that's important as we start to look at
11 these other topics.

12 And if I might, Your Honor, Exhibit E to Ms. Knapp's
13 declaration is the amended complaint. This is LIV's amended
14 complaint.

15 THE COURT: The 115-page --

16 MR. DOOLEY: 115 -- I'm not going to read all 115
17 pages --

18 THE COURT: Okay.

19 MR. DOOLEY: -- but helpfully, there's a synopsis in
20 the front, in the introduction.

21 THE COURT: Yep.

22 MR. DOOLEY: Paragraph 11 alleges the Tour's conduct
23 has included at least seven practices, each of which is
24 exclusionary, anticompetitive, and unlawful under the Sherman
25 Act, and then it goes on to describe threatening player

1 plaintiffs and members; amending and expanding its media rights
2 and conflicting events regulations; orchestrating a group
3 boycott with the European tour to ensure that any golfer who
4 considers defying the Tour's threats cannot pursue his career;
5 encouraging PGA of America to disallow golf -- LIV Golf players
6 from playing in the major tournament it sponsors; leaning on
7 Augusta National; threatening agents and business partners;
8 threatening vendors and small companies in the golf and sports
9 production industry; threatening sponsors and broadcasters that
10 they must sever their relationship with players that join LIV
11 Golf.

12 There's two separate monopolization claims in the
13 case, two Section 2 claims, and a Section 1 claim alleging a
14 group boycott of LIV.

15 So a lot more conduct is at issue in this case than
16 just the recruitment of players. I think that's an important,
17 an important thing to keep in mind.

18 The second thing that I, that I think is important to
19 keep in mind is -- I'll come back to that, but let me talk
20 about Request 14.

21 THE COURT: And I do think it's, it's probably just
22 fair for you-all just to maybe give you at least my general
23 impression right now, and -- which I'm not wedded to, right, I
24 mean, I'll hear your argument, and please, you know, feel free
25 to correct me if I'm wrong, I obviously haven't lived this case

1 the way you-all have lived this case, but I think to your
2 point, Mr. Dooley, the -- it does seem that when you consider
3 the claims, the nature of the claims, the nature of the
4 counterclaims, when you consider potential defenses to both, if
5 the parties satisfied their burden, damage issues, my sense is
6 that, that the discovery in this matter is probably a little
7 more broad than in many cases.

8 I think that's just the nature of the case. It's the
9 nature of the, of the antitrust claims, it's the nature of
10 the -- I think it's just the nature of the litigation.

11 I also think although this Court typically, not just
12 me but I think typically in the Eastern District of Virginia,
13 we really, really work very hard to make sure nonparties are
14 not unduly burdened. We work very hard to make sure that the
15 parties bear the laboring oar of the litigation, but my sense
16 is that McKenna is not a typical nonparty.

17 I do think that, that McKenna seems to be intricately
18 involved in the underlying facts, and it does seem that McKenna
19 is a likely repository for a lot of properly discoverable
20 information. Now, it doesn't mean that the doors are
21 completely blown open and, and, you know, you're going to have
22 to turn over your entire business files to, to the PGA, but I
23 do think that just generally speaking, again, just considering
24 the nature of the claims, counterclaims, defenses, potential
25 damages issues, and the role that McKenna played, I think it

1 is -- I think that they are, they are going to be an active
2 participant in the discovery process.

3 And I just say that because I just want to make sure
4 you-all knew at least what my initial impressions are, and if
5 that helps -- you know, if you want to disabuse me of some of
6 those thoughts, I promise you I'm coming to this with an open
7 mind, but that's at least the sense that I get from the, the
8 submissions of the parties.

9 So with that, if you want to just move to 14 and
10 we'll see exactly what language we need to -- how, if at all,
11 we need to, to cabin in 14.

12 MR. DOOLEY: Absolutely. Thank you, Your Honor.

13 Let me talk about why Request No. 14, which calls for
14 McKenna's communications with sponsors, broadcasters, vendors,
15 hosts, that kind of thing, why are those communications
16 relevant. First, they're directly relevant to LIV's
17 allegation --

18 THE COURT: It doesn't sound like they're contesting
19 those.

20 MR. DOOLEY: Sorry?

21 THE COURT: It doesn't sound like they're contesting
22 those.

23 MR. KRESS: Exactly, Your Honor.

24 MR. DOOLEY: You are --

25 MR. KRESS: We're here to talk about what else.

1 THE COURT: Yeah.

2 MR. DOOLEY: No, they are contesting the
3 communications. They haven't agreed to produce their
4 communications with third-party broadcasters, sponsors,
5 vendors.

6 Have you?

7 MR. KRESS: Your Honor, if that will make this
8 dispute go away, we'll give it. That's why we've been trying
9 to have negotiation on these topics from four months ago.

10 MR. DOOLEY: Your Honor, that -- this is the first
11 I've heard of it. I'm happy --

12 THE COURT: That's --

13 MR. DOOLEY: If we can resolve it, we can resolve it.
14 If they'll produce --

15 THE COURT: It's all good. We're just trying to
16 solve problems and move ahead, so that's fine. So if we, if we
17 just go down RFP 14, it sounds like there's no dispute with
18 respect to communication with professional golfers, with
19 respect to agents, sports media, sponsors of professional golf.

20 Is there any dispute about, Mr. Kress, with respect
21 to equipment manufacturers?

22 MR. KRESS: No, Your Honor.

23 THE COURT: Venue or course owners?

24 MR. KRESS: None.

25 THE COURT: Golf trade associations regarding the PGA

1 Tour?

2 MR. KRESS: None.

3 THE COURT: As well as the rest of those entities?

4 Okay.

5 MR. KRESS: No, that's right, Your Honor. It's
6 this -- it's this broad, every communication ever, including,
7 and it's Kingdom of Saudi Arabia, Kingdom of Saudi Arabia human
8 rights records.

9 You know, if we're producing a communication and the
10 party we're communicating with brings those topics up, if it's
11 in the communication, then obviously, that's responsive; we're
12 going to give that. But we're not, you know -- we're here to
13 talk about what the claims of the case are.

14 THE COURT: So tell me specifically, Mr. Kress -- and
15 I'm sorry to keep doing the back-and-forth, but I can promise
16 you --

17 MR. DOOLEY: That's fine, Your Honor. And if it's
18 helpful for Mr. Kress to come up --

19 THE COURT: I can promise you I'm going to get in
20 trouble --

21 MR. DOOLEY: Sure.

22 THE COURT: -- because, you know, the recording
23 device really does only pick up people at the, at the podium.

24 MR. DOOLEY: I don't have any secret notes.

25 MR. KRESS: No.

1 THE COURT: So, so tell me specifically, Mr. Kress,
2 with respect to 14, how you want 14 narrowed in those last
3 three lines.

4 MR. KRESS: Sure. What we had agreed to previously,
5 Your Honor, was the communications with our clients about those
6 interactions we had with third-party golf stakeholders, right?
7 And so now I think what we are agreeing -- they're saying we
8 also need the underlying communications, regardless of whether
9 or not we transmitted those to our client.

10 THE COURT: Okay.

11 MR. KRESS: And so if those are with respect to, you
12 know, the opportunity of doing business with LIV or why they
13 don't want to do business with LIV, that's what we are --
14 that's what we're agreeing to.

15 THE COURT: Okay. So, so we have a dispute over the
16 scope of all communications.

17 MR. KRESS: Correct.

18 THE COURT: And then with respect to the last three
19 lines, efforts to establish a competing professional golf tour,
20 Saudi PIF, Golf Saudi, the Kingdom of Saudi Arabia, the Kingdom
21 of Saudi Arabia's human rights records, it sounds like there's
22 an objection there.

23 MR. KRESS: Yeah, Your Honor. Again, if those
24 topics, though, if that's part of the underlying communication
25 with a third party, so be it. That, that would be produced as

1 part of the discovery.

2 THE COURT: Okay. And DOJ's investigation of the PGA
3 Tour, the same thing?

4 MR. KRESS: I believe that's been dropped, but I'll
5 let Mr. Dooley speak to that.

6 THE COURT: Okay.

7 MR. DOOLEY: We, we can drop that one here, Your
8 Honor, yep.

9 THE COURT: Okay. So really it just sounds like that
10 the thrust of 14 is whether or not it should be limited to all
11 communications between McKenna and their client or
12 communications between McKenna and the individual sponsors of
13 professional -- the individual entities within that, that
14 range; is that right?

15 And your argument is most of those, as I
16 understand -- please correct me if I'm wrong --

17 MR. KRESS: Yeah.

18 THE COURT: -- that most of those communications were
19 passed on to your clients in any event.

20 MR. KRESS: Correct, Your Honor. So our internal
21 communications never passed on, I think I have a hard time
22 seeing how that's relevant to a discoverable much less leads to
23 admissible evidence. We're not a part of the case, but again,
24 if that's, you know, if their claim is that LIV has argued that
25 interference with those kind of stakeholder relationships have

1 caused damage, right, and now it's somehow we never even
2 bothered to communicate that to LIV, so they're not going to
3 use it in the case, but that's fine, Your Honor.

4 If it's would they be willing or interested in doing
5 business with us and why or why not, that's fine. We'll agree
6 to give that to us -- to them.

7 THE COURT: All right. Is that enough for you,
8 Mr. Dooley?

9 MR. DOOLEY: I think so. I just want to make sure I
10 understand what the offer is on the table. Previously, the
11 offer had been communications with LIV and with PIF about
12 McKenna's communications with third parties. Now I understand
13 that McKenna is offering to produce its communications with
14 third parties to the extent that they relate to these topics.

15 THE COURT: Is that your understanding?

16 MR. KRESS: Correct, Your Honor.

17 THE COURT: All right.

18 MR. DOOLEY: I think we're done with 14.

19 THE COURT: Perfect. I consider that a great
20 personal success.

21 MR. DOOLEY: Your Honor, you're doing, you're doing
22 better than we did in our meet and confer, so --

23 THE COURT: What do you want to wrestle with next?

24 MR. KRESS: We're going to wrestle, Your Honor.

25 If you mind --

1 MR. DOOLEY: Sure, sure.

2 MR. KRESS: Yeah, so let me, let me turn to the next
3 one. And so again, the way we look at this, how we came here
4 today, what they had agreed to narrow to was all, all of our
5 communications with external parties; all of our communications
6 with internal parties, LIV and PIF; all the media strategy
7 documents; and then all of our internal documents related to
8 all of the above. That's everything that's at the company.
9 That's everything.

10 So Request No. 13 is their next one, Your Honor.
11 Here they asked for all documents and communications related to
12 discussions with LIV, Saudi PIF, third parties working on the
13 LIF or Saudi PIF relating to the PGA Tour. That is pretty much
14 the scope of our engagement.

15 And I'm sorry, Your Honor, one reason we handed you
16 the order earlier today, even when they were saying PIF is all
17 part of this, the court out in California said no, we're not
18 going to let you just give -- you know, you can't just ask for
19 all communications or agreements with third parties, including
20 consultants, related to LIV or the developments of a
21 professional golf tournament or league.

22 That's already been decided. That's been decided by
23 the issuing court as to a party.

24 THE COURT: Okay.

25 MR. KRESS: Now they want to go to a consultant and

1 ask for the same thing that they were just told they couldn't
2 get. So, Your Honor, the basic argument here is this is
3 essentially everything. There's no effort to modify or narrow
4 this at all.

5 We have agreed to -- and they, they point out -- like
6 I said before, they did point out, right, I understand your
7 comment and it's correct and Mr. Dooley's argument is well
8 known that maybe the complaint in the case is broader than
9 player solicitation or the PGA rules restricting player
10 solicitation, but when they cited to you repeatedly that
11 argument as to PIF in the Northern District of California and
12 say that the judge has ruled that all of this discovery is
13 relevant, again, page 6 of the motion to transfer, this is,
14 this is a quote from their brief: PIF's conduct particularly
15 in financial backing of LIV, she found, is essential to the
16 Tour's theory that LIV interfered with its contracts with
17 golfers, right?

18 We have agreed to give that before we ever came here
19 today. So when they want to say that's not the heart of the
20 case, that's still the heart of the case. There might be other
21 things at issue. That is the heart of the case.

22 And now we've also agreed, like I said, we've agreed
23 to our communications with our clients as to alleged other
24 business relationships that have been interfered with. So
25 we're now literally talking about anything else, any other

1 strategy, any other media strategy, any other PR campaign,
2 anything that's not at issue in this case, whether Jay Monahan
3 pays taxes, whatever it might be, none of those things are at
4 issue in the case, Your Honor, and certainly not sort of
5 narrowly tailored for a third party.

6 And again, I respect your, your notion that we're
7 different than a pure bystander. We agree with that. We
8 don't, we don't dispute that.

9 THE COURT: Mr. Dooley, this does seem to be a bit of
10 a blockbuster RFP, right? Is there any way to make this,
11 number one, not duplicative of other requests and a little more
12 tailored to the specific theories in the case?

13 MR. DOOLEY: Your Honor, let me, let me address that.
14 I mean, the -- first of all, the request is not -- as drafted
15 is not every communication with PIF. It's every communication
16 with PIF relating to the Tour. That's, that's the scope of the
17 request.

18 Additionally, McKenna's only involvement with LIV,
19 its entire relationship with LIV is related to competing with
20 the PGA Tour. If you look at Exhibit 12, which is the work
21 order, it's under seal so I'm not going to quote it, but if you
22 look at the very first sentence, it describes broadly speaking
23 what McKenna's remit is, and it's to help LIV compete with the
24 PGA Tour.

25 So Mr. Kress is saying, well, this might include

1 every communication with PIF, but that doesn't make the request
2 overbroad if all of their communications are relevant to the
3 case. An overbroad request sweeps in things that are
4 irrelevant. There's nothing irrelevant that Mr. Kress has
5 identified that would be included in its communications with
6 PIF, which is really the heart of this request, No. 13.

7 Let me also, Your Honor, I think it's, it's
8 worthwhile just -- we've talked about this recent CMC. This
9 is -- this was a CMC held a couple weeks ago by Judge Freeman
10 in the underlying matter, and let me, if I might, this is
11 Exhibit 1 to Mr. Phung's declaration in support of our
12 opposition, and this CMC arose, and we talked about this a
13 little bit on Wednesday, arose in the context of the motions to
14 quash the subpoenas to PIF were denied, they were ordered to
15 produce discovery, they refused to comply, they're appealing,
16 there's no stay of discovery, but they're not complying with
17 the subpoenas, and the court said, okay, I understand that, but
18 I'm going to let discovery go forward, and her direction was,
19 Tour, you need to go out and get documents from the people who
20 communicated with PIF.

21 And just if I, if I might quote, I'm looking at this
22 is page 38, we attached an excerpt:

23 "THE COURT: All right, that's fine. And did you
24 send third-party discovery to any of these asking them for all
25 of their correspondence with PIF and Al-Ramayyan?"

1 My partner, Mr. Peter, responds. Then the court goes
2 on, this is line 9: "You need to send out discovery to each of
3 those deponents and get everything they have that is a
4 correspondence with PIF and Al-Ramayyan."

5 Mr. Peters responds: "We're trying."

6 "THE COURT: I just think you need to do it."

7 On the next page: "And if you've not subpoenaed all
8 communications they had with PIF and Mr. Al-Ramayyan, you need
9 to do that, and then you need to depose them. You have to do
10 that."

11 The court has made very clear that the Tour -- that
12 the court understands the significance of PIF, understands its,
13 its relevance not just to issues of player interference. I
14 mean, I can quote from the court's order sustaining the
15 magistrate judge's order on the motion -- denying the motion to
16 quash. I mean, the court unequivocally says -- well, I mean,
17 describes all of the relevance of, of PIF: founded LIV as a
18 disruptor business vis-a-vis the Tour; funded LIV with 100
19 percent of the start-up costs; oversees its operations,
20 including strategic and financial planning; taking a direct
21 role in LIV's operations; negotiation of player contracts;
22 discussions with potential sponsors.

23 The magistrate judge concluded that PIF's commercial
24 conduct outside the United States, including formation,
25 funding, oversight and operation of LIV, caused a direct effect

1 inside the United States; and the court was absolutely clear
2 that the evidence from PIF is relevant not just to the Tour's
3 counterclaims but also to defending LIV's claims.

4 So communication -- PIF is a central actor in every
5 piece of this case. McKenna was retained to help LIV, which is
6 a creation of PIF, compete with the Tour, which is what this
7 case is about. All the tasks on that work order are directed
8 to competing with the Tour, including digging up dirt on Jay
9 Monahan and others. So their communications with PIF are
10 relevant.

11 And this isn't, this isn't a fishing expedition by
12 any stretch of the imagination, Your Honor. This is not, oh,
13 maybe there's some communications, maybe they talked to PIF.

14 We know that Mr. McKenna, the principal at McKenna,
15 has direct text message communications with senior executives
16 in Saudi Arabia at PIF. We know that he attended meetings
17 personally with Mr. Al-Ramayyan, the governor of PIF and second
18 only at PIF to the crown prince.

19 We know that Mr. McKenna attended board meetings not
20 of LIV Golf, Inc., the entity in the case, but its parent
21 company, which is nominally based in Jersey, at Channel
22 Islands; and, and Mr. McKenna is there with senior PIF
23 executives, including Mr. Al-Ramayyan, who sit on the board of
24 these parent companies.

25 So there's really no question that there's relevant

1 communications between McKenna and PIF. The court in
2 California has made clear that PIF is directly relevant to the
3 case, and so the Tour believes that production of McKenna's
4 communications with PIF regarding the Tour is warranted in this
5 situation and, and entirely justified.

6 THE COURT: So, Mr. Kessler, it does -- or, I'm
7 sorry, Mr. Kessler -- Mr. Kress, it does seem -- I'm sorry, I
8 interrupted you. Do you want to argue?

9 MR. KRESS: I did, Your Honor.

10 THE COURT: Please.

11 MR. KRESS: Briefly.

12 THE COURT: Please.

13 MR. KRESS: I think Mr. Dooley's answer to your
14 question whether there was any possible way to narrow a request
15 that's all documents and communications --

16 THE COURT: Because the answer was no.

17 MR. KRESS: -- with LIV or Saudi or --

18 THE COURT: Right.

19 MR. KRESS: -- anyone on behalf of LIV or Saudi
20 relating to the PGA Tour, he basically answered the question
21 yes, that is everything that McKenna does.

22 THE COURT: I gotcha.

23 MR. KRESS: And so we don't think that's fair. We
24 think that what he said about the, the prior court order or the
25 discussion in the -- in a discovery conference out there, not

1 about discovery from PIF but about whether to go ahead and seek
2 discovery from third parties, I think he's ruling out the idea
3 that "seek every communications" means those that are relevant
4 to the claim.

5 PIF is in the case for one claim. It's their alleged
6 tortious interference. The judge ruled, and they cite it in
7 their paper, it's relevant to player solicitation and
8 contracts.

9 What did the court order when it had discovery from
10 PIF, what got struck? All communications and agreements with
11 consultants related to LIV or the development of a professional
12 golf league or tour.

13 It's clearly not anything that anybody ever
14 communicated with PIF about. It's got to be related to a claim
15 or defense in the case. We've been trying to get at that,
16 again, for four months.

17 THE COURT: But isn't what -- I guess I have two
18 questions. Isn't what -- on its face, right, the request seems
19 a little broad, but given the facts of this case and given the
20 fact that, that I think, as Mr. Dooley points out, the entire
21 purpose of McKenna's involvement is to engage in efforts that
22 really are the subject of both the claim and counterclaim,
23 depending on how you --

24 MR. KRESS: Sure.

25 THE COURT: -- depending on how you want to splice

1 it, so this isn't a situation that we often see, right, where
2 there are -- where the litigation is involving one issue, we
3 want to stay focused on that, we want to stay proportionate,
4 and the parties are dealing with 11 other things or a hundred
5 other things, right?

6 MR. KRESS: Yeah.

7 THE COURT: What their -- their relationship is
8 entirely centered on facts that do seem to bear on some aspect,
9 whether it's coming or going, whether it's the claims or
10 counterclaim, of -- because I'm not sure it's just related to
11 their counterclaim, right? I mean, you could see a path that,
12 that it could also, you know, it could also impact their
13 defense. You could see how it can also impact -- you know, I'm
14 not going to try your --

15 MR. KRESS: Sure.

16 THE COURT: You know, but I think it -- I think
17 there's a reasonable path there to a little bit more of a broad
18 perspective, but I guess my point is isn't it -- or my question
19 is does it -- isn't it a little bit different here, where the
20 engagement is almost exclusively tied to the core issues being
21 litigated in San Francisco?

22 MR. KRESS: So yes, Your Honor, that, that would be
23 different, and clearly, as we've talked about, player
24 recruitment, player solicitation, player compensation, no
25 question about it, they get that. We agree. That, that is the

1 direct overlap between the claims and the counterclaim and our
2 engagement.

3 The second piece, if they're saying that LIV is also
4 claiming that there was interference with broadcasters,
5 vendors, sponsors, equipment manufacturers, we've agreed to
6 give them that. No question there's an overlap there.

7 You have to look at what else, lobbying the
8 government? There's all sorts of facets where parties compete
9 that are not at play there. If we're trying to promote LIV in
10 a positive light in the media or social media or if we're
11 trying to expose the hypocrisy of PGA, whatever it might be, in
12 the media or social media, that has nothing to do with the
13 claims in this case, Your Honor.

14 THE COURT: But would that be responsive to this RFP?

15 MR. KRESS: I think they're saying it is. It's every
16 communication about everything. We're only doing the work
17 because it relates to the PGA Tour. I don't think that's a
18 narrowing at all.

19 THE COURT: I don't think -- the way I read it, it's
20 discussions with respect -- it's all communications related to
21 discussions with Saudi PIF or third parties working on behalf
22 of LIV --

23 MR. KRESS: Right.

24 THE COURT: -- or Saudi PIF.

25 So, I mean, I think if there are -- if there are

1 communications with -- if there are lobbying efforts with
2 public officials, I'm not sure I would see that as responsive
3 to this RFP just on the face of it. I mean, it seems like, you
4 know, they're, they're looking for communications.

5 I mean, I take your point --

6 MR. KRESS: Right. And I think that was your initial
7 question to Mr. Dooley: Can we narrow this to what you think
8 is actually at issue?

9 THE COURT: Well, so Mr. Dooley's view is, is --

10 MR. KRESS: Everything.

11 THE COURT: -- no.

12 How do you propose that it be narrowed?

13 MR. KRESS: Sure. Our proposal was those, was those
14 things: player contract solicitations, all of that. We get
15 that, right? Contract solicitations, compensation, all those
16 topics, that's clearly the core of the case, regardless of what
17 anyone else says, right?

18 Whether PGA ever restricted players from playing,
19 that's the claim. Whether they interfered with our ability to
20 recruit players, that's the claim. Whether we tortiously
21 interfered with their player contracts, that's the
22 counterclaim. That -- those are the claims.

23 Now, if they also say there are stakeholders, that's
24 what we've agreed to give them. If we're communicating with
25 broadcasters, broadcaster says: We would love to carry LIV

1 Golf, but you know what? The PGA has threatened us and is
2 going to make our lives miserable, we can't do it, we're
3 producing that.

4 On the alternative --

5 THE COURT: But these are just communications, right,
6 with respect to Saudi PIF or other presumably consultants or
7 entities who are working on behalf of LIV, right?

8 MR. KRESS: Right.

9 THE COURT: So, I mean, the way I read this is
10 they're looking for communications with -- within the LIV
11 umbrella.

12 MR. KRESS: Right, related to the PGA Tour.

13 THE COURT: Related to the PGA Tour. Which is --

14 MR. KRESS: That's every document.

15 THE COURT: Well, but, but isn't that a product of
16 the nature of the engagement, right? I mean, it was not -- the
17 relationship between, as I understand it --

18 MR. KRESS: Yeah.

19 THE COURT: -- the relationship between McKenna and
20 its client was not, you know, we are handling generally -- or
21 general public affairs.

22 We are handling, you know --

23 MR. KRESS: They have those too, Your Honor. We're
24 going to get to that request next.

25 THE COURT: Well, that's not -- but that's not this,

1 that's not -- I don't see that necessarily as this request.

2 MR. KRESS: I think if they're saying we're talking
3 about public affairs strategy, I think they're saying that's
4 in. Everything we do is related to PGA Tour, right? We're
5 trying to develop a golf league.

6 You're right, that, that is the nature of our
7 retention with our client, LIV, but that doesn't mean that
8 that's what's relevant in the litigation between LIV and the
9 PGA Tour; and they're trying to conflate those two things.

10 THE COURT: I understand your opinion. Is there
11 anything, anything else that you can point to from a ruling by
12 either the magistrate judge in California or, obviously, the
13 district judge in California that would, that would either
14 support your position or, or allow me to sort of narrow this in
15 a way that is clearly consistent with their intent?

16 MR. KRESS: Sure, Your Honor. So first of all, like
17 I said, it's already clear that the court in Northern
18 California struck this exact request. It can't be all
19 communications with a consultant related to LIV in the
20 development of a professional golf league. That's been struck
21 already, saying that's too much. So that's already happened.

22 The other pieces of that, if you look at that order,
23 Your Honor --

24 THE COURT: And I'm sorry, that was what you just
25 handed up recently, correct?

1 MR. KRESS: Correct. That was Exhibit A to the order
2 on PGA's motion to compel PIF, discovery from PIF, not a third
3 party, discovery from PIF, saying no, we're not going there.

4 And if you look, that would be No. 13, Your Honor.

5 THE COURT: Was that 13?

6 MR. KRESS: Yep. And so what else we're concerned
7 with, right, if we look at -- even if we look at this order,
8 what has been -- what else has been struck? Documents and
9 communications relating to actual potential benefit of the
10 Kingdom of Saudi Arabia, Saudi Arabia monarchy, hosting golf
11 events, assisting with professional golf. That has been
12 struck.

13 Documents and communications related to complaints,
14 criticisms, negative opinions about LIV, you, the Kingdom of
15 Saudi Arabia, professional golf, participating in LIV events,
16 Saudi Arabia, struck.

17 So yeah, there's, there's a whole bunch of this where
18 it's been very specific. Again, this is even as to a party PIF
19 saying you can't go that far. It's not anything and
20 everything.

21 And we think this is -- this goes throughout, Your
22 Honor. We think that, frankly, they're just fishing. You've
23 seen their search terms. Search terms say related to the human
24 rights, Khashoggi, Saudi human rights record, Saudi government,
25 9/11. This has nothing to do with golf.

1 We think we -- we think we understand why we're here.

2 THE COURT: Well, antitrust revelations don't always
3 have -- are exclusively limited to what the underlying product
4 is, right?

5 MR. KRESS: Right.

6 THE COURT: I mean, that's one of the -- that's one
7 of the challenges of an antitrust case is you're really looking
8 at the anticompetitive behaviors, as opposed to what --

9 MR. KRESS: And if we were talking about the golf and
10 not human rights, Saudi government, 9/11, Khashoggi --

11 THE COURT: I suspect -- I gotcha. I suspect
12 we'll -- I suspect we'll get there.

13 MR. KRESS: Okay.

14 THE COURT: The -- Mr. Dooley, why -- with respect to
15 No. 13, why shouldn't that guide this decision? What, what
16 material -- what's materially different between that ruling and
17 this?

18 MR. DOOLEY: Well, Request 13 was much broader than
19 what we're asking for, Your Honor. That related to
20 communications and agreements related to LIV or the development
21 of a professional golf league or tour.

22 That's not what we're asking for. We're -- I mean,
23 communications -- we're asking for McKenna's communications
24 with PIF related to the PGA Tour, related to us, the Tour, as
25 opposed to related to LIV and LIV's development of a competing

1 tour.

2 In the context of -- I mean, Your Honor has to
3 remember LIV is entirely a creation of PIF. PIF -- it didn't
4 exist. They created it. So they're going to have -- PIF is
5 going to have millions of communications relating to LIV. They
6 hired a bunch of third parties. They hired banks. They hired
7 consultants. And this request called for every communication
8 with those consultants related to LIV. Well, that's what PIF
9 was doing.

10 What we're asking for from McKenna is -- who did not
11 create LIV, who is not going to have as many documents, is a
12 much smaller entity, as they like to remind us, than PIF, we're
13 asking for their communications related to the PGA Tour.
14 That's materially different than what was struck in -- by
15 Magistrate Judge van Keulen.

16 THE COURT: And the period of time we're talking
17 about, right, is from October of '21 or beginning -- so, so
18 roughly you're talking about --

19 MR. DOOLEY: 18-19.

20 THE COURT: -- communications over about 18 months?

21 MR. DOOLEY: Yes.

22 MR. KRESS: Yes, Your Honor.

23 MR. DOOLEY: May I make just --

24 THE COURT: Okay.

25 MR. DOOLEY: -- a couple of other points just in

1 response on this one?

2 Just so the record is clear, the court has made
3 absolutely crystal clear in California that PIF and
4 communications with PIF and their actions are relevant to the
5 counterclaims and the defenses to LIV's claims, right? The
6 court said that -- this is in the district court judge's ruling
7 affirming the magistrate judge -- the Court also finds that the
8 requested discovery to PIF is relevant both to the antitrust
9 claims and the Tour's defenses thereto and Tour's
10 counterclaims.

11 So there's no -- PIF is not cabined to the
12 counterclaims.

13 I also just want to be clear what we're talking about
14 here in Request 13. I think you said it well: communications
15 within the LIV world. So this is -- we're looking for
16 McKenna's communications with PIF related to the Tour and
17 McKenna's communications related to any other third party that
18 was working on behalf of PIF or LIV.

19 So we know, for example, that McKenna communicated
20 with a well-known -- another well-known communications firm
21 about, about the Tour, and so those communications would be,
22 would be relevant and would be responsive.

23 So it's not everything, as Mr. Kress suggests. It's
24 communications with PIF and with third parties retained by PIF
25 or LIV to the extent that those relate to the Tour.

1 And it doesn't include lobbying. We've agreed to
2 that. And so I think when you, when you get there and in light
3 of what I think Your Honor has recognized, which is McKenna's
4 work is entirely focused on the competition between LIV and the
5 Tour, I think this is a reasonable request.

6 THE COURT: All right. Anything else? I'm prepared
7 to rule on this.

8 MR. KRESS: Your Honor, I would only say that I
9 strongly suspect that anything related to the PGA Tour,
10 relating to is the flip side of a nickel when it comes to
11 relating to work with LIV about establishing a competing golf
12 tour. So --

13 THE COURT: I understand. And I'll, I'll put a lot
14 more reasoning on the record at the end, but I just want to
15 make sure that the parties at least -- it's easier for me to
16 keep organized as we go.

17 I do agree with the PGA's Tour -- or the PGA's
18 position with respect to RFP 13. It's not often that, that
19 there wouldn't be some tailoring of a -- of an RFP of this
20 nature, but I think given the facts of this case, given the
21 nature of McKenna's engagement, given the nature of the claims,
22 I think it is both relevant and proportional, and so I'll deny
23 the motion to quash with respect to 13.

24 MR. KRESS: If I may just -- and I promise we
25 definitely want to move along, and I know you want to move

1 along, so all discussions here today, they've been saying "all
2 communications with." The actual specification is "all
3 documents and communications with that relate to the
4 communications with."

5 Are we limiting it to actual communications with LIV
6 or PIF?

7 MR. DOOLEY: May I be heard on that, Your Honor?

8 THE COURT: Sure.

9 MR. DOOLEY: Mr. Kress is, of course, right; that's
10 the language of Request 13. The documents related to, I think,
11 relates to the fourth category in our opposition, which is the
12 internal McKenna documents. I think we can talk about those
13 separately, but for purposes of your ruling, I think we can
14 limit this request, Request 13, to communications, and then we
15 can talk about internal -- a document related to a
16 communication would be something internal.

17 So this can be limited to the communications.

18 THE COURT: Okay. Thank you.

19 And I apologize to do this so quickly. Could we just
20 take about a ten-minute recess? It looks like I'm just going
21 to need to reschedule something for, for early this afternoon,
22 but if we could just take ten minutes, we'll come back and pick
23 up where we left off. Thanks.

24 MR. DOOLEY: Thank you.

25 (Recess from 11:00 a.m., until 11:16 a.m.)

1 THE COURT: All right, Mr. Kress, what's up next?

2 MR. KRESS: All right, Your Honor, thank you. Up
3 next is this, I guess, broad category of public relations and
4 media strategy.

5 THE COURT: Right.

6 MR. KRESS: And I know we're trying to dig into
7 specific requests and not general topics, so if we -- I think
8 if we looked at their Requests 7 and 17, both of which they
9 cite in this category in their opposition brief as two of the
10 five or six on this topic, all documents related to media
11 campaigns, indirect campaigns, unattributed campaigns, targeted
12 at social media regarding PGA Tour, LIV, LIV's efforts to
13 establish a competing professional golf league, Saudi PIF, Golf
14 Saudi, the Kingdom of Saudi Arabia, Kingdom of Saudi Arabia's
15 human right records, DOJ investigation of the PGA Tour
16 allegations in this litigation, that's No. 7; and No. 17 is all
17 documents and communications related to any media, social
18 media, public affairs involving professional golfers, market
19 benefit of competition in professional golf, the PGA Tour, LIV,
20 Saudi PIF, or the Kingdom of Saudi Arabia.

21 So this is when we go back to they want all of our
22 external communications, all of our internal communications,
23 and now all documents and communications related to public
24 affairs and media strategy. This is, frankly, just flat-out
25 fishing, Your Honor. There's -- as I said before, there are

1 multiple ways that parties can compete, one of which is in the
2 court of public opinion. There is no claim, there is no
3 defense, there is no counterclaim that sounds in defamation,
4 that sounds that we said mean things about them, whatever it
5 might be.

6 This is that they want to -- they want to sort of
7 cast aspersions about the Kingdom of Saudi Arabia, Kingdom of
8 Saudi Arabia human rights record. This is, this is, frankly,
9 fishing.

10 So, you know, we are a media and public relations
11 firm in part. So again, establishment of a competing golf
12 league, why would we want to turn over to PGA our sort of
13 strategy documents, media documents that say this is why
14 competition is good, this is why, you know, more golf is
15 better, more, more variety is better?

16 So -- anyway, we think it's pretty clear this is just
17 incredibly overbroad and not remotely relevant.

18 And again, to go back to the order, the actual order
19 on PIF from California, what are two of the things that are
20 struck? Documents and communications related to potential
21 benefit to you, the Kingdom of Saudi Arabia, the Saudi Arabia
22 monarchy, hosting golf events or being associated with
23 professional documents. Documents and communications related
24 to complaints, criticisms, negative opinions about LIV, you,
25 the Kingdom of Saudi Arabia, professional golfers participating

1 in LIV, or the Saudi Arabia monarchy.

2 Again, those are struck. Now they want our documents
3 about including those topics on -- with the media. There's,
4 there's no claim, there's no defense that relates in any way to
5 this.

6 Now, just briefly, I know that they're going to
7 mention Klout. Klout was the PGA's essential PR strategy firm,
8 and LIV did seek discovery on that. There was no order. There
9 was no ruling. Whatever got produced ended up getting worked
10 out. We were not part of that. We don't know anything about
11 it.

12 But more materially, we're just materially different
13 than Klout was in that case, and two primary reasons here, Your
14 Honor. One is relevance. What the PGA says -- and again, like
15 you said, catching smoke in a bottle, we've been trying to
16 catch smoke in a bottle for five months.

17 The only thing they've said in their papers is it
18 might show -- so somehow our media strategy, media -- social
19 media campaigns might show what particular third parties said
20 or didn't say about why they would do business with LIV. It
21 doesn't even make any sense. The fact that we might be
22 prepared to address, push back, related to, you know,
23 association with Kingdom of Saudi Arabia issues or human
24 rights, that's -- we're trying to compete.

25 That's not -- that has nothing to do with what third

1 parties say why or why they would not do business with us. So
2 that's the only thing that PGA has argued.

3 The PGA keeps saying, well, their, their defense is
4 the monopolization claim, right? So their defense to LIV's
5 claim is that there are legitimate business reasons that they
6 don't want to associate with golfers or sponsors or tournament
7 hosts who might associate with LIV because LIV is associated
8 with Saudi Arabia.

9 That's, that's their theory. That's pretty
10 attenuated, but that's their theory. So now we're not talking
11 about when LIV discovery of PGA, it would say, okay, you guys
12 are actually out there fomenting those concerns, that
13 association.

14 That's not at issue here. Now they're saying, well,
15 we might try to defend ourselves from that.

16 That's not a claim. That's not a defense. It's
17 just -- it's just prurient curiosity, I think.

18 And the second thing, though, Your Honor, is need,
19 right? So they have from, either from LIV from discovery or
20 from whatever is out there in the, in the realm, whatever the
21 actual media campaign is, whatever those, those documents or
22 strategies are, the difference -- and that's what Mr. McKenna
23 said in his declaration in part, right? We're an agent. If we
24 do something, we communicate regularly with our client.

25 On the Klout subpoena, it was very clear that the PGA

1 gave instructions to Klout to not share their work product with
2 PGA, to disassociate themselves with what was going on. So
3 there's both difference on relevance and on need, Your Honor,
4 between us in that situation.

5 THE COURT: All right, thank you.

6 MR. DOOLEY: Thanks, Your Honor. Let me try to
7 address Mr. Kress's point. Before, before I forget, Your
8 Honor, one broader point that I did want to make at the
9 beginning, and this is as good a time to insert it as any, the
10 standard here is a finding of undue burden on the recipient of
11 the subpoena. It's their -- they have the burden in this
12 proceeding to show that they would be unduly burdened by the
13 subpoena that we've served on them.

14 This doesn't go to this specific set of requests. It
15 goes to the broader point.

16 There's no evidence in front of Your Honor of any
17 burden on McKenna at all. They haven't told you how many
18 documents might be involved. They haven't told you how many
19 people it would take to look for them. They haven't shown you
20 how much time it would take.

21 We gave them -- we've identified three custodians,
22 and we gave them search terms. They could have run those
23 search terms and come in here and said, Your Honor, we ran
24 these search terms, and it returns 250,000 documents, and now
25 we're going to have to review those, and that's a burden.

1 They didn't do that. There's zero evidence before
2 Your Honor of any burden on McKenna. And I just think as you
3 evaluate these last couple of requests, it's worth bearing that
4 in mind.

5 Arguably, there's no evidentiary basis to find an
6 undue burden because there's no evidence of any burden, but I
7 think in evaluating the relevance versus the burden, you've got
8 good arguments on relevance and zero arguments or evidence of
9 any burden to McKenna, and, of course, they're not paying for
10 it.

11 THE COURT: But don't we have to -- I take your
12 point, they haven't necessarily made that argument, so there's
13 not necessarily an undue burden under the Rule 45(d) issue that
14 seems to be -- that seems to be a motivating issue here, but
15 we're still cabined in by 26(b), right?

16 MR. DOOLEY: Absolutely.

17 THE COURT: We still have that, okay.

18 MR. DOOLEY: Absolutely.

19 THE COURT: I think that's -- I think everybody's
20 sort of working off that, that same sheet of music.

21 MR. DOOLEY: Well, I mean, but it goes a little bit
22 to this idea that, well, they're asking for everything. I
23 mean, that's a breadth argument. It's not really about
24 relevance. It's about, well, that would require us to --

25 THE COURT: Kind of a proportionality argument.

1 MR. DOOLEY: Right. And when there's no evidence of
2 what the actual burden would be, you can't really assess the
3 proportionality. I mean, if they came in here and said their
4 request would, would require us to produce a million documents,
5 that would be evidence that you could weigh on the
6 proportionality aspect.

7 THE COURT: I get that.

8 MR. DOOLEY: I just --

9 THE COURT: Correct, they're not making that
10 argument, but the proportionality, as I understand it, is
11 always that it has to be proportional to the needs of the case.

12 MR. DOOLEY: Absolutely, Your Honor.

13 THE COURT: Which always kind of brings us back to
14 that.

15 MR. DOOLEY: Yeah, and I did -- let me now return. I
16 just wanted to before I forgot that point, let me talk about
17 the request for, for media and the -- specifically, we can talk
18 about Request No. 7. Four, four points here, I think.

19 First, the comparison to the Court's order modifying
20 our subpoena as to PIF is -- it's really apples to oranges,
21 Your Honor. This was a request to PIF, which is the sovereign
22 wealth fund of Saudi Arabia, for documents related to the
23 actual or potential benefit to the Kingdom of Saudi Arabia of
24 hosting golf events or associating with professional golf and
25 document requests to the Kingdom of Saudi Arabia sovereign

1 wealth fund for documents related to complaints, criticism, or
2 negative opinions about PIF or about Kingdom of Saudi Arabia.

3 That's very different. That's a much broader request
4 to a much bigger entity that has many -- I mean, the sovereign
5 wealth fund invests in hundreds of businesses around the world,
6 and so arguably, that -- this was a -- is a much broader
7 request than what we're talking about here, where, Your Honor,
8 we know from the work order -- and this goes to -- this is my
9 second point. This is not anything close to a fishing
10 expedition, Your Honor.

11 We have, and it's Exhibit 12 to Mr. Phung's
12 declaration, the work order, and it's under seal, so I'm not
13 going to read it, but --

14 THE COURT: You can summarize. I have a copy, and
15 I've read it.

16 MR. DOOLEY: Yeah.

17 THE COURT: I understand.

18 MR. DOOLEY: I mean, you can go through it, and it
19 describes -- and there's -- McKenna has never denied that
20 they've done all the things that are described there, and it
21 walks through specific tasks that, that LIV gave to McKenna
22 regarding promoting its image and attacking the Tour's image.
23 It's, it's all in there, so there's -- this isn't a fishing
24 expedition. This happened. We know it happened. They have
25 never denied that it happened. They've never denied that they

1 did this work. So it's not a fishing expedition.

2 And furthermore, just -- if you look at some of the
3 exhibits we attached, you look at Exhibit 27, that's
4 Mr. McKenna being involved in an urgent communications call;
5 Exhibit 28, he's called upon to craft a response when the LIV
6 executives leave; Exhibit 29, he's providing background to the
7 press about, about PIF and about LIV; Exhibit 30, he's creating
8 a narrative about independent contractors and, and the Tour.

9 He's responsible for -- this is Exhibit 23 --
10 securing op-eds and friendly reporters.

11 So this isn't a fishing expedition. We know they've
12 done this work. The question now is, is it relevant, and I'll
13 tell you why it's relevant. There's three reasons.

14 First, the reputation of LIV is part of our defense
15 to the claim that we've gone out and threatened businesses and
16 we've threatened the, the Augusta National and we've twisted
17 arms and we've threatened sponsors. It's all the things that I
18 read you in paragraph 11 of the amended complaint, all the
19 threats and arm twisting and leaning -- that's the word they
20 use -- leaning.

21 The Tour's defense to that in part, well, it didn't
22 happen, but also, to the extent that any tournament host or
23 vendor didn't want to work with LIV, the reason is they don't
24 want to be associated with LIV's reputation. They don't want
25 to be associated with the Kingdom of Saudi Arabia's human

1 rights record. They don't want to be associated with PIF.

2 So McKenna's work -- what did Mr. Kress say? --
3 putting LIV in a positive light, their media campaigns, their
4 assessment of, of LIV's -- the public's perception of LIV
5 directly supports the Tour's position that the reason that
6 businesses aren't work with LIV, to the extent they're not, has
7 nothing to do with the Tour and everything to do with LIV.

8 That's the first reason why the -- LIV's reputation,
9 which is what they were trying to polish, and which they were
10 assessing and analyzing and putting together PowerPoints and
11 plans, it's relevant to that defense.

12 Second, it's relevant to our pro-competitive
13 justification for our regulations. LIV says you've got these
14 regulations that don't allow Tour members to take a weekend off
15 and play for LIV in a conflicting event. That's
16 anticompetitive.

17 We say it's not anticompetitive. We don't want our
18 members going and playing with LIV and then coming back and
19 bringing the association of LIV and its reputation to our
20 event. That discourages us from investing in our product, in
21 improving our product. That's a pro-competitive justification,
22 and, and the justification ties to LIV's reputation and what
23 the public thinks of LIV, which is exactly what McKenna was
24 tasked with assessing and with improving.

25 Third, Mr. Kress said that there's no claim or

1 defense that relates to PR campaigns or Klout. That's just not
2 true, Your Honor. It's just not -- I wish it was true.

3 THE COURT: I'm sorry, could you -- I'm sorry, I just
4 missed the last -- could you just repeat that last sentence?

5 MR. DOOLEY: Sure. So Mr. Kress said -- this is the
6 third reason why LIV's reputation and McKenna's work polishing
7 that reputation is relevant. Mr. Kress said that there's no
8 claim that relates to public relations work or how LIV is
9 perceived or how the Tour is perceived.

10 That's not true, and we cite this in, it's Exhibit 4
11 to Mr. Phung's declaration. It's a motion that LIV filed, and
12 their allegation is that we've -- that the Tour has engaged in
13 anticompetitive conduct by going -- by hiring a PR company,
14 this company Klout, and fomenting -- that was Mr. Kress's
15 word -- fomenting anti-LIV sentiment.

16 Essentially, LIV's position is there's no real
17 anti-LIV sentiment. It's all been created by the Tour.
18 That's -- and that's anticompetitive. The Tour has gone out
19 and behaved improperly and hired a PR company and kicked up all
20 this dust, and it's all fake. It's fake news is the sort of
21 the argument, I guess.

22 And their -- evidence from McKenna that, in fact,
23 there is a public perception, a negative public perception
24 attached to LIV, is directly relevant to refuting that claim.

25 Our argument is no, the public is legitimate- --

1 public and business are legitimately concerned about being
2 associated with LIV, and that explains to the extent that
3 they're having trouble getting tournament sites, which I don't
4 think they are but that's what they say, the reason is their
5 reputation and the reputation of their sponsor, the Kingdom of
6 Saudi Arabia.

7 So we should be able to get this evidence that
8 McKenna has, that we know they have, they haven't disputed that
9 they have it, analyzing, assessing, and, and burnishing LIV's
10 reputation, and that's what the requests call for. The
11 requests are just quotes from the work order, right? And we're
12 asking for the work they did.

13 Request 7, which Mr. Kress quoted from, it just
14 quotes the work order, right? We say documents and
15 communications related to media campaigns, including indirect
16 campaigns, unattributed campaigns, targeted and anonymized
17 social media campaigns. So we're just asking for the work that
18 they did pursuant to the work order.

19 THE COURT: But doesn't -- I understand how you came
20 up with that language, but just because it comes from the work
21 order doesn't mean that it's tailored to the issues in this
22 case, right?

23 MR. DOOLEY: I understand that, and I -- what I'm --
24 perhaps I wasn't persuasive or clear, but I'm trying to
25 explain, Your Honor, our view as to what --

1 THE COURT: No, I understand. I understand. The --
2 all right. Did you want to respond?

3 MR. DOOLEY: Can I make one more point, Your Honor?

4 THE COURT: Please. Absolutely.

5 MR. DOOLEY: The last point. My fourth point was
6 Mr. Kress suggested at the end that his last point was there's
7 no need for this because whatever McKenna did is out in the
8 public. Whatever public relations work they did, we can just
9 get it that way.

10 But, of course, if you look at the language of the
11 work order, there's a lot of language suggesting unattributed
12 campaigns, kind of covert campaigns that aren't attributed to
13 anybody, so there'd be no way we'd be able to find that except
14 for getting the documents from McKenna.

15 THE COURT: That's fine. I'm sorry, before
16 Mr. Kress, if I can just ask you just, Mr. Dooley, just one or
17 two quick questions, so with respect to your first point,
18 that -- let's assume for the sake of argument, and, you know,
19 maybe I'm jumping into, you know, a pond that I just don't need
20 to be in at the moment, but reputational issues are going to be
21 hard to prove, right? I mean, it's a -- you know, it's -- that
22 is not an easy thing for any judge or jury to get their arms
23 around with any degree of certainty, right?

24 So let's say for the sake of argument that I accept
25 your, your notion that it's still, it's still important in this

1 case, right, still an issue in this case, right, for any number
2 of reasons, and, and one of the issues, as you pointed out, is
3 are there vendors, you know, in sort of a large sort of
4 encapsulating a lot of different vaults, right, are there golf
5 courses, are there, you know, merchandise made, anybody, right,
6 who could support a tour who refused to work with LIV because
7 they expressed some concern about reputational damage, right?

8 Couldn't there be an RFP that's narrowly tailored to
9 that point?

10 MR. DOOLEY: Yes, there could be. Yes.

11 THE COURT: Do they have records or documents from
12 which a -- in which a, a -- any third party, any vendor said --
13 relayed to them that they don't want to be, or that, you know,
14 they're refusing their outreach, they don't want to be
15 associated with LIV, and the reason they don't want to be
16 associated with LIV is for reputational reasons, the same
17 reason that you're asserting here?

18 Is that, is that -- first of all, let me ask
19 Mr. Kress, is that something you-all would object to?

20 MR. KRESS: Not only is it not something we'd object
21 to; that was our first topic today. We agreed to do that
22 before we came here.

23 THE COURT: Okay.

24 MR. KRESS: For that exact reason.

25 THE COURT: So does, does that serve your purpose?

1 And if not, why not?

2 MR. DOOLEY: Sure. So that is absolutely relevant,
3 and those documents -- it's not hypothetical. Those documents
4 exist. We've attached some of them as, as exhibits,
5 communications in which Mr. McKenna was sent out to deal with
6 vendors who were concerned about doing business with LIV
7 because of their connections to the Saudis. So it's not
8 hypothetical. It is relevant.

9 It's not sufficient, though, because it goes beyond
10 individual vendors expressing their concern. McKenna was hired
11 on a broader task, right, to formulate strategies,
12 communication strategies to put, in Mr. Kress's words, to put
13 LIV in a positive light, so there's -- there's presentations.
14 There's work product analyzing what the, what the public's
15 perception is of LIV, and so it's not just a particular vendor.
16 It's surveys. It's analysis of what people are saying. It's
17 all the things that communications professionals do.

18 So it's broader than just an individual vendor or an
19 individual third party refusing to do business. I agree,
20 that's covered by our previous discussion, but I think it's
21 broader -- there are more documents that are relevant to our
22 defenses --

23 THE COURT: So if they have, you know, if they have
24 polling, you know -- I'm just making this up; I have no idea.
25 You know, if they have documents in there that say in our

1 assessment, right, LIV suffers from the following reputational
2 issues --

3 MR. DOOLEY: It's absolutely relevant to this case.

4 THE COURT: Why?

5 MR. DOOLEY: Why? Because it's, it's a couple of
6 things. It's the things -- it's -- it proves the broader point
7 that the difficulty that LIV is having with respect to gaining
8 traction in the market has nothing to do with the Tour. It's
9 its own problems because of its funder. That's, that's No. 1.
10 No. 2, it's relevant to the Tour's justification for
11 why it's enforcing its regulations to, to its conflicting
12 events regulations so that -- because the Tour doesn't want its
13 members on a weekend when there's a Tour event going over and
14 playing with LIV to make it look like the Tour approves of LIV
15 and that the players come back and then there's a, there's an
16 association between the two.

17 The Tour has spent 50-plus years developing a
18 reputation, and it has the right to protect that reputation,
19 and allowing players to violate the conflicting events rule by
20 playing in the -- in LIV would --

21 THE COURT: Now, do you think we are getting to the
22 point where, where -- and I do believe and I, and I think you
23 agree, and we discussed probably this maybe to some degree that
24 maybe this is not a typical nonparty, right? But I do think
25 we're getting to the point where you're using a nonparty. I

1 think we're getting to the outer boundaries of what we can
2 expect from a nonparty.

3 MR. DOOLEY: If I might respond to that, Your Honor?

4 THE COURT: Please.

5 MR. DOOLEY: They're certainly not a typical
6 nonparty. We all agree on that. Here the Tour has out- -- or
7 LIV, rather, has outsourced this work of assessing its
8 reputation, polishing its reputation, they've outsourced that
9 work to McKenna, and so we can't get the documents from -- I
10 mean, we can get what we can get from LIV, but we know that
11 McKenna has done all this work on LIV's reputation. They don't
12 deny that. And that reputational work is, is absolutely
13 relevant.

14 Now, if, you know, if the Court wanted to narrow
15 the --

16 THE COURT: I think that's where we're going to have
17 to go.

18 MR. DOOLEY: Okay.

19 THE COURT: You know, I'll tell you at least where my
20 head is right now.

21 MR. DOOLEY: Okay.

22 THE COURT: I just don't think they should have to
23 turn over their entire media strategy or media efforts, right?

24 MR. DOOLEY: Sure.

25 THE COURT: I just think that's -- I think that's

1 just way too broad.

2 MR. DOOLEY: Okay.

3 THE COURT: And I'm assuming that as part of a media
4 effort, as you've indicated, they're, you know, they're using a
5 reference to put out positive stories or positive images of LIV
6 and perhaps negative images or negative stories of the PGA,
7 right? And I think everybody is kind of assuming that's what
8 Klout did, that's what, you know, McKenna did. I mean,
9 they're -- that's the nature in some degree of what they were
10 hired to do.

11 But I think we need to somehow -- I think we need to
12 somehow narrow the parameters to make it --

13 MR. DOOLEY: Sure.

14 THE COURT: -- linear to what matters.

15 And if your -- and if your other points are with
16 respect to the reputational damage that the Tour would suffer
17 if players under contract to the Tour were engaged in both or
18 playing on both tours, right, I'm not sure that's something
19 that PGA just isn't going to have to figure out for themselves,
20 right?

21 I'm not sure how going to McKenna -- you know, if the
22 PGA is -- if the PGA's position is we don't want our Tour
23 somehow tainted, right -- and I'm not making any commentary
24 about whether it's a good argument, bad argument --

25 MR. DOOLEY: Sure. That's the argument, yeah.

1 THE COURT: -- whether there was any reputational
2 arguments there or any damage, I'm not making any comment about
3 that. I mean, this is just sort of, you know, just within the
4 discovery context, right?

5 Why are we putting that burden on a nonparty rather
6 than having the PGA responsible for, for figuring that out?

7 And admittedly, it's a hard thing to, to bring
8 together in an evidentiary forum.

9 MR. DOOLEY: Absolutely. The reason why we're coming
10 to McKenna is because we know that LIV hired them to do this
11 work. They have never disputed that they did the work, and
12 it's -- they've been paid handsomely to do it. That's also
13 never been disputed.

14 So it's, it's a source of information -- it's
15 essentially a -- they're also an agent of LIV, right? It's an
16 admission by LIV -- any work that they've done is LIV's
17 analysis, their analysis of LIV's own reputation, so it's if we
18 do the work, LIV can attack it.

19 If it's LIV's work that they hired, assess what our
20 reputation is. Work on our reputation.

21 THE COURT: Why isn't this more analogous to, like,
22 you know, competing experts, right? You have your experts from
23 Klout, they have their experts in McKenna, and, you know, one
24 side can say here's where -- you know, here's where we view our
25 reputation or our issues, here's our information how they view

1 their, you know, both good and bad. Why isn't this ultimately,
2 to the extent that it's relevant, to the extent that it's
3 admissible, why isn't this more analogous to just competing
4 experts?

5 MR. DOOLEY: Well, in some senses, I don't think
6 that's a bad analogy. I mean, they -- and in the context of
7 competing experts, you would get discovery from the experts on
8 the basis of their opinions and, and their work and their prior
9 opinions, and so you could assess it. That's what we're, we're
10 after.

11 Let me suggest a compromise here which would narrow
12 this, which is we would live with a request -- we think that
13 their efforts to paint the Tour in a negative light and to
14 paint LIV in a positive light, we think those planting stories,
15 all the things that are described in the work order, we think
16 all that's relevant, but we would live with a request that went
17 to documents related to the reputation or public perception of
18 LIV, PIF, or the Kingdom of Saudi Arabia in their possession.

19 So if they've got documents that reflect analysis,
20 surveys, whatever they've done of the public reputation, the
21 public perception of LIV, PIF, or Saudi Arabia, that will serve
22 our purpose much, much narrower, and I have no doubt that they
23 have them.

24 THE COURT: And you can't get this from the parties
25 because?

1 MR. DOOLEY: Because --

2 THE COURT: -- because of the stay?

3 MR. DOOLEY: I mean, we've certainly asked for it
4 from LIV, but LIV paid them to do this work. They're the,
5 they're the ones that did the work for LIV, to do the
6 assessment, to do the analysis, and --

7 THE COURT: Are you suggesting that they, they have
8 information that they would not have passed on to LIV?

9 MR. DOOLEY: Well, to the extent that they do, yes.
10 We, we think that that's relevant. Internal summary, I mean,
11 this gets a little bit to the internal documents, but --

12 THE COURT: Which we'll get to.

13 MR. DOOLEY: -- internal summaries of conversations.
14 I talked to so-and-so, and he or she said this about LIV's
15 reputation.

16 THE COURT: Okay. All right, I think Mr. Kress is
17 chomping at the bit.

18 MR. KRESS: I am, Your Honor. Just, just very
19 briefly, I promise very briefly, I think you start to see what
20 we get at. It's five months, and like you said earlier,
21 grasping at smoke. The only argument they've said is that it
22 might show what third parties may or may not have done business
23 with LIV because of reputational concerns.

24 We've already agreed to give them that. This is now
25 get ready to do air cover in case someone raises issue X, Y, or

1 Z. This is what I mean by fishing. Basically, there might be
2 something in there, I guess, but that's not what discovery is,
3 certainly not what tailored third-party discovery is.

4 THE COURT: What about the issue that there should be
5 some balance, right? And I understand that, you know, Klout
6 may be, you know, may be in a little bit of a different
7 perspective, but if, if reputation is going to be an issue, if
8 it is going to be an issue with respect to -- and I, and I
9 think I understand Mr. Dooley correctly -- that part of the
10 Tour's argument may be, you know, LIV struggled -- and I have
11 no idea if LIV is or is not struggling -- but to whatever
12 extent, that they were struggling not because of any
13 anticompetitive behavior on the part of -- on behalf of the
14 Tour, but because of this other independent reason because
15 there were reputational reasons, right?

16 MR. KRESS: Okay.

17 THE COURT: And it's -- and LIV's position is that
18 the -- that to the extent that there are reputational issues,
19 that's part and parcel of the PGA's efforts to plant -- or to,
20 or to, you know, affirmatively attack LIV's reputation in some
21 way, shape, or form, or the Kingdom of Saudi Arabia's
22 reputation, or link the two or whatever.

23 So if, if it is an issue that's joined, why shouldn't
24 there be some balance in terms of you have the Klout
25 information, they have the McKenna information, and I suppose,

1 you know, Mr. Dooley is right, to the extent that I threw out
2 the dueling experts argument, you know, everybody gets a peek
3 under the hood of the other expert, so why would there not be
4 some balance there?

5 MR. KRESS: Sure. Sure, Your Honor. So a couple
6 things. One is -- and again, this is sort of what they're
7 saying. So it's not a claim. It's not a defense. It is
8 potentially relevant to a response to their defense, so that
9 there's a big difference to that.

10 THE COURT: Well, I think they say it is a defense.

11 MR. KRESS: No, no. Their defense is that they don't
12 want people associated with LIV to also be associated with the
13 Tour, right? And so we believe, and that was what the PGA --
14 excuse me, not we, PGA -- excuse me, LIV -- that was the LIV
15 discovery on Klout.

16 Klout stirred that up, fomented those concerns,
17 right? That's their business justification.

18 Here we're talking about if we then put out press or
19 social media to say, you know, see LIV in a good light, it's
20 good for competition, you can read the work order. The work
21 order is not scandalous. It's like put us in a positive light.
22 Promote the benefits of competition. More golf work.

23 How is that relevant to their case? It's just
24 their's is a specific defense; we agree with that; but our --
25 there's nothing they're pointing to here. They're just saying

1 they want it all because there might be something there that
2 bears on third parties.

3 This is actually the first time we've even heard this
4 argument. Before, in the brief, it's, you know, it might show
5 why third parties didn't do business with us. I don't -- as
6 you said earlier, I don't think that's the case, but we've
7 already given them that.

8 THE COURT: But I thought there was an argument too,
9 which is, you know, why LIV wasn't successful was not because
10 of conduct the PGA has done but because of other, other issues
11 independent of the PGA and potentially if, if LIV prevails on
12 liability, maybe potentially with respect to damages.

13 MR. KRESS: I think we're -- I just think we're three
14 degrees of attenuation sort of at least now. Our efforts to
15 arguably respond to their efforts to, you know, to attack us,
16 so --

17 THE COURT: Well, again, I think this is -- I'm kind
18 of swimming in somebody else's pond.

19 MR. KRESS: I understand, Your Honor.

20 THE COURT: And I understand that's -- but, you know,
21 I'm not entirely sure or I'd be highly skeptical that the whole
22 reputation issue is going to drive the verdict in this case --

23 MR. KRESS: I agree with that too, Your Honor.

24 THE COURT: -- or is going to drive the result in
25 this case.

1 MR. KRESS: In fact, in fact, Mr. Dooley earlier read
2 about 11 paragraphs of claims that he's saying show how broad
3 it was. None of this is even in there, what he read.

4 So, I mean, we are, we are definitely swimming on the
5 edges, as you said earlier.

6 THE COURT: Well, Mr. Dooley, how can we narrow --
7 again, I think we just need to come up with some language that
8 is a little more tailored to your specific needs on this point,
9 right? I don't think that it's appropriate to order a nonparty
10 to open up their entire media efforts.

11 MR. DOOLEY: And I, and I hear you, Your Honor, and I
12 hear the point about, you know, public relations on, on the
13 benefits of competition. Really we are willing to live with a
14 narrow request that calls for documents related to or
15 reflecting LIV's -- let me say it again -- documents reflecting
16 the public reputation or public perception of LIV, the PIF, or
17 the Kingdom of Saudi Arabia.

18 So documents that they have that, that reflect
19 research or documentation, surveys, whatever they've collected
20 that shows what the public thinks of LIV or the Kingdom of
21 Saudi Arabia or the Public Investment Fund, we'll live with
22 that. That's, that's -- they have it.

23 THE COURT: Why isn't that reasonable, Mr. -- you
24 know, under the circumstances? So in other words, if there
25 is -- and I think this protects McKenna from the standpoint of,

1 you know, you're not going to have to disclose your media
2 strategy. You're not going to have to disclose, you know, any
3 of your, I think, internal work product to a degree on that,
4 but if you have -- if you have documents -- again, it could be
5 polling; it could be whatever -- that indicate or that narrow
6 issue with that degree of certainty, then I do think that's
7 reasonable to provide in discovery, and I suspect it would be a
8 very small subset of what you ultimately have.

9 MR. KRESS: Your Honor, we -- we'll agree with that.
10 And just to be clear, though, because I think the way you said
11 it I liked better, so it can't be like all documents relating
12 to, but if we do analysis, if we do polls, if we do a survey,
13 first of all, we would have communicated those with our client,
14 so we will have already captured that, which (inaudible), but
15 we'll give those actual analysis and strategy and -- or
16 whatever you're saying that the -- the categories you said.

17 I'm a little concerned when you say all documents
18 related to.

19 THE COURT: Well, let's come up --

20 MR. KRESS: It's a PR firm. I mean, that's --

21 THE COURT: Well, let's come up with some language.

22 MR. KRESS: Right.

23 THE COURT: If you came up with any documents that
24 incorporated any data, any analysis.

25 MR. DOOLEY: May I suggest a word, Your Honor? The

1 word that I would use is "reflective." I mean, so a document
2 that itself describes the public perception or the public
3 reputation of LIV, therefore, the KSA, that's what we're
4 looking for.

5 THE COURT: How about "incorporates"? How about any
6 document that incorporates any data, any analysis, any
7 conclusions drawn regarding the reputation or the parties that
8 it, you know, the parties that you named?

9 MR. DOOLEY: That's fine, Your Honor.

10 THE COURT: I think that's -- I think that gets us
11 where we need to be.

12 MR. DOOLEY: Absolutely.

13 THE COURT: Okay. Any heartburn over that,
14 Mr. Kress?

15 MR. KRESS: No, Your Honor.

16 THE COURT: Okay. Okay.

17 MR. KRESS: Okay. Great progress.

18 The last one. Again, we've had any communications
19 with external shareholders, any communications with internal
20 stakeholders, all internal media strategy. And then the last
21 category that they use is every internal document on any of
22 those documents.

23 I don't even know where to start. That's the
24 definition of fishing.

25 THE COURT: Well, let's start with Mr. Dooley.

1 Why -- you know, I guess there are a couple of issues here we
2 need to wrestle. Number one is I'm assuming that really what
3 would be at issue would be internal documents that for whatever
4 reason were not relayed to LIV.

5 MR. DOOLEY: Correct.

6 THE COURT: Right?

7 MR. DOOLEY: Anything sent to LIV we're not asking
8 for.

9 THE COURT: Right.

10 MR. KRESS: So, I'm sorry, just to be clear, they're
11 asking for it because we've already agreed to give it to them.

12 THE COURT: I understand. I understand. I'm just,
13 I'm just trying to --

14 MR. DOOLEY: We're talking about this request doesn't
15 ask for it.

16 THE COURT: Yeah. So, so walk me through why their
17 internal deliberations --

18 MR. DOOLEY: Sure.

19 THE COURT: -- drafts of documents --

20 MR. DOOLEY: Sure.

21 THE COURT: -- why is that likely to, to result in
22 valuable information --

23 MR. DOOLEY: Right.

24 THE COURT: -- to you?

25 MR. DOOLEY: The principal, the principal reason that

1 internal communications are relevant -- and we're not asking
2 for all internal communications. We're asking for internal
3 communications regarding player solicitation, contracts and
4 compensation, internal communications relating to discussions
5 with golf stakeholders, internal communications related to the
6 topic we just talked about, and internal communications related
7 to, to PIF.

8 What we're looking for are internal communications
9 that reflect oral communications with PIF, with other third
10 parties, with LIV. So in other words, I don't really care what
11 McKenna's opinion about something is. I don't really care
12 about their drafts so much.

13 What I'm interested in is do they have -- are there
14 internal communications that say I spoke with PIF -- there's no
15 email. I spoke with PIF today, and I spoke with
16 Mr. Al-Ramayyan, and here's what we need to do on player
17 solicitation.

18 That's indisputably relevant to the case. It's not
19 something we can capture without getting those internal
20 communications, and they probably have them. We don't know
21 because we don't have their internal documents.

22 So I'm happy to limit this to internal communications
23 that reflect oral communications with PIF, LIV, or other third
24 parties regarding the topics we've already talked about today.

25 THE COURT: And let's just go through them and

1 memorialize them, just so I'm clear.

2 MR. DOOLEY: Sure. So you're asking me to craft a
3 document request off the top of my head, but I --

4 THE COURT: On the fly.

5 MR. DOOLEY: I think I can do it.

6 THE COURT: I have total confidence that you can do
7 it.

8 MR. DOOLEY: We're asking for internal communications
9 and correspondence that reflects -- will reflect discussions
10 with, with LIV, PIF, or third parties regarding, one, player
11 solicitation, contracts, and compensation; two, discussions
12 with golf stakeholders such as sponsors, vendors, tournament
13 hosts; three, McKenna's analysis of the public perception or
14 public reputation of LIV, PIF, and the Kingdom of Saudi Arabia;
15 and four, the PGA Tour.

16 So we're looking for internal documents that reflect
17 communications with three entities regarding four topics, all
18 of which we've gone through the relevance of.

19 THE COURT: Well, the PGA Tour is basically asking
20 for everything, right? I mean, I can't imagine in some way,
21 shape, or form, given the nature of a work order, that every
22 communication is not going to relate to --

23 MR. DOOLEY: Sure. So we can make that narrower
24 then. Then the fourth will be reflecting internal -- internal
25 correspondence reflecting communications with PIF, LIV, or

1 other third parties regarding discussions with PIF about the
2 PGA Tour. That's what we decided on on the PIF topic.

3 So internal correspondence that says I communicated
4 with, with Mr. Al-Ramayyan or Mr. Foster or -- about the PGA
5 Tour, and here's what he said.

6 THE COURT: I'm sorry, could you repeat one more time
7 how you wanted to limit No. 4, how you wanted to narrow it?

8 MR. DOOLEY: Sure. So I'll probably not do this
9 exactly the same way I did it before, but we're looking for
10 internal documents that reflect communications -- we'll even
11 make it more specific -- documents that reflect nonwritten
12 communications with PIF, LIV, or a third -- other third --

13 THE COURT: No, I got that part. I'm sorry, just --

14 MR. DOOLEY: Yep. And then relating to, one, player
15 solicitation contracts --

16 THE COURT: I got the first three. I just need what
17 you said --

18 MR. DOOLEY: You just need the last one.

19 THE COURT: Yes.

20 MR. DOOLEY: The fourth is discussions with PIF
21 relating to the PGA Tour.

22 THE COURT: Right, okay.

23 And, and just briefly walk me through again why these
24 internal discussions of a nonparty are --

25 MR. DOOLEY: Right.

1 THE COURT: -- given, given all -- given the fact
2 that you have all the communications with their client.

3 MR. DOOLEY: Yeah, I -- we're not interested in all
4 internal communications. So --

5 THE COURT: Just -- I gotcha.

6 MR. DOOLEY: Yeah. So, so if Mr. McKenna is talking
7 to I think it's Ms. Gallagher about just strategizing, we don't
8 want that, but what we need are internal communications that
9 reflect oral communications on the topics that we've already
10 determined are relevant. So if there's an internal email from
11 Mr. McKenna that says I spoke to Broadcaster X today, and
12 Broadcaster X said, sorry, we can't, we can't strike a deal
13 with LIV because we can't take the PR hit --

14 THE COURT: So essentially, you're saying that
15 this -- you're just trying to -- and I don't want to put words
16 in your mouth, but you're just trying to fill a potential gap,
17 right? If there is not -- if there is some relevant
18 communication but that communication was not in written form,
19 either email or some other form --

20 MR. DOOLEY: Right. Exactly.

21 THE COURT: -- you're just trying to identify was
22 there a phone conversation --

23 MR. DOOLEY: Exactly.

24 THE COURT: -- that covered one of the areas that
25 we've already ruled on.

1 MR. DOOLEY: Exactly.

2 THE COURT: So -- all right. I think that that's,
3 honestly, that's an important fact that was kind of lost on me.
4 So if this is limited to internal communications that, that on
5 their face identify a conversation, an oral conversation on a
6 topic that we've already deemed discoverable, what's wrong with
7 that?

8 MR. KRESS: I don't know there's anything wrong with
9 it, Your Honor. I still struggle with Item 4 on the PGA Tour
10 part of it, but Item 3 --

11 THE COURT: Well, we're going to -- we're going to go
12 back and we're going to tailor it --

13 MR. KRESS: Okay.

14 THE COURT: -- to what we've already ruled.

15 MR. KRESS: Okay. So yes, so the one thing I would
16 say is Item 3, any internal discussion of McKenna's analysis of
17 public, that one, I think we just dealt with that previously.

18 THE COURT: Well, we're going to make sure everything
19 is consistent.

20 MR. KRESS: No, no, I know, but I think we just dealt
21 with that one previously, and that was internal work product,
22 and now we're talking about communications that relate to it.
23 I thought we were going to actually give the actual documents
24 incorporating --

25 THE COURT: We are.

1 MR. KRESS: Okay.

2 THE COURT: We are. I gotcha.

3 MR. KRESS: So this one -- that's the one.

4 THE COURT: I'm not worried -- I'm not worried about
5 No. 3.

6 MR. KRESS: Okay. That's --

7 THE COURT: I think, I think if -- as I ruled before,
8 I do think with respect to -- that's kind of a data-driven, you
9 know -- you know, I think if they have -- I think what's
10 important to you is if they have documents, if they have
11 something where there was some analysis done, where there was,
12 you know -- and it's incorporated in a document, right, but I
13 think here, you know, to your point, if you're trying to say
14 was there a phone call and that phone call, we talked about how
15 we're going to, you know, recruit Player X from the Tour -- or
16 from LIV to the Tour or whatever --

17 MR. KRESS: Right.

18 THE COURT: -- vice versa, right, I'm totally on
19 board with you.

20 MR. KRESS: And we agree with that.

21 THE COURT: Yeah.

22 MR. KRESS: We have no issue with that.

23 THE COURT: But I, but I think that, that, you know,
24 if there was a phone call and somebody says -- I think, I think
25 we need to be -- we need to be concrete, and we need to be

1 consistent.

2 So, I mean, I'm with you in terms of if there are
3 internal communications that on their face reflect an oral
4 conversation regarding player solicitation, player contracts,
5 player compensation --

6 MR. KRESS: Right.

7 THE COURT: -- I think that's, that's properly
8 discoverable.

9 MR. KRESS: Agreed, Your Honor. And we would go
10 further and agree with what we said earlier on golf
11 stakeholders. If it's tournament hosts, vendors, sponsors,
12 equipment suppliers, I mean, broadcasters, those discrete
13 things they mentioned before, again, that's, that's fine.
14 That's doable for us.

15 THE COURT: Great. So we have Category 1 and 2
16 satisfied. Category 3, I think, is -- I don't think falls
17 under this. Category 4 just seems like a broad catch-all.

18 MR. DOOLEY: May I address that?

19 THE COURT: Please.

20 MR. DOOLEY: I just want to be cognizant of the
21 direction to speak from the podium.

22 Category 4 is internal -- is, is really the mirror of
23 what we talked about when we talked about PIF.
24 Communications -- Category 4 here is internal communications
25 that reflect oral discussions with PIF regarding the PGA Tour.

1 So if there's an email that says I just got off the phone with
2 whomever at PIF or I was just at a meeting and here's what was
3 discussed, that's relevant, and that's what we want for this
4 fourth category.

5 THE COURT: Well, I'm not sure if I was at a meeting
6 and here's what was discussed would probably suffice, right? I
7 mean, I think the purpose of this is to, is to identify
8 properly for you a universe of communications that you would
9 have a right to pursue further, right? Because you don't
10 know -- if there is a -- if there is a communication that
11 reflects an oral conversation about a topic that we've deemed
12 is properly discoverable, you wouldn't know that --

13 MR. DOOLEY: Right.

14 THE COURT: -- unless, unless they provide these
15 communications.

16 That, I think, is the goal here.

17 MR. DOOLEY: Yes.

18 THE COURT: Right?

19 MR. DOOLEY: And I think the substance, we wouldn't
20 know the substance of discussions at a meeting, and if there's
21 a document that says here's what was discussed, that's a
22 summary of an oral communication I think would be covered by
23 this. With those -- the way you've described it, Your Honor,
24 we're satisfied with that.

25 THE COURT: Do you have any objection to that?

1 MR. KRESS: As long as we stick with it's related to
2 the PGA Tour, right, because that was the -- that was the
3 overarching area. It's not relating to LIV. It's not related
4 to establishment of a competing tour. It's not related to the
5 Kingdom of Saudi Arabia. It's related to the PGA Tour. Then
6 we're fine, Your Honor.

7 THE COURT: All right. I think we have an agreement.
8 All right, good. Good.

9 MR. DOOLEY: Thank you very much, Your Honor.

10 THE COURT: Did I miss anything?

11 MR. KRESS: No, Your Honor.

12 MR. DOOLEY: No.

13 THE COURT: Is there, is there anything else that
14 you-all think that, that we need to wrestle with about this?

15 MR. DOOLEY: Nothing from our end. And again,
16 thank you, Your Honor, for your patience in working through
17 this.

18 THE COURT: Happy to do it.

19 MR. KRESS: Agreed. Nothing from our end, and thank
20 you for your patience.

21 THE COURT: Well, it's an interesting case. I'll be
22 looking forward to following it from the cheap seats.

23 All right, you-all have a nice day. Thank you.

24 MR. KRESS: Thank you.

25 MR. DOOLEY: Thank you.

1 (Which were all the proceedings
2 had at this time.)
3

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